Supreme Court, U.S.
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No. 05-636

IN THE

SUPREME COURT OF THE UNITED STATES

JOAN ROBERTS,
Petitioner

v.

TITUS COUNTY MEMORIAL HOSPITAL

On Petition for Writ of Certiorari to the United States Court of Appeals for the Texas Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Is the Texas Whistleblower Act facially vague and/or vague as applied by the Courts in the case at bar, effectually condemning speech and privileges protected under the First and Fourteenth Amendments due to its lack of definitive standards and the Courts arbitrary enforcement; and accordingly, are the Act's operative terms, clauses, and phrase, "appropriate law enforcement authority", as construed and applied by the courts in this and other cases, to establish *two* categories of violation of law reports – thus, necessarily claimants – one protected and one not, rationally to the State's interest and limit Petitioner and other whistleblowers equal protection and a remedy for injuries guaranteed by due course of law when the Act reasonably admits of a different meaning? See Whistleblower Act in the Appendix at E.

LIST OF PARTIES

In compliance with Rule 14 1 (b) of the Rules of the Supreme Court of the United States, all parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT

Petitioner is a private citizen and not a non-governmental corporation.

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CITATIONS OF OPINIONS

The judgment and opinion of the Court of Appeals, Sixth Appellate District of Texas, affirming Defendant's Motion for Summary Judgment from the 76/276th Judicial District Court of Titus County, Texas is unpublished, but appears in the Appendix at A, *Roberts v. Titus County Memorial Hospital,* No. 06-04-0056-CV, Tex. App. - Texarkana (March 15, 2005).

The final order of the 76/276th Judicial District Court of Titus County, Texas, granting Defendant's Motion for Summary Judgment appears in the Appendix at B, *Roberts v. Titus County Memorial Hospital*, No. 29675, 76/276th Judicial District of Titus County, Texas (April 20, 2004).

The order of the Supreme Court Of Texas denying Petitioner's Petition For Review from the Court of Appeals, Sixth Appellate District of Texas, appears in the Appendix at C, *Roberts v. Titus County Memorial Hospital,* No. 05-0246 (Texas, June 24, 2005).

The order of the Supreme Court of Texas denying Petitioner's Motion For Rehearing on August 12th, 2005 appears in App. D.

STATEMENT OF JURISDICTION

The judgment and opinion of the Court of Appeals, Sixth Appellate District of Texas was entered on March 15, 2005; the order of the Supreme Court of Texas denying Petitioner's timely filed Petition For Review was entered on June 24, 2005; the timely filed Motion For Rehearing was overruled on August 12, 2005; and the Petition for Certiorari was filed within 90 days thereafter in the U. S. Supreme Court. The U. S. Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1257(a), 28 U.S.C. 2403(b) may apply and notifications required by Rule 29.4(c) have been made.

CONSTITUTIONAL PROVISIONS & STATUTES,

The First Amendment of the United Stated Constitution provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U. S. Const. Amend., [Article 1.] (1789)

The Fourteenth Amendment of the United States Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U. S. Constitutional Amendment, Article XIV. (1868)

The Texas Whistleblower Act provides in relevant part:

§ 554.002 (a) A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority. (App. E).

(b) In this section, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:

(1) regulate under or enforce the law alleged to be violated in the report; or

(2) investigate or prosecute a violation of criminal law.

STATEMENT OF THE CASE

Petitioner Roberts was a public employee of Titus County Memorial Hospital for sixteen years where she was employed as a CAT scan technologist in Radiology. (5th Am. Pet.). While employed, Roberts filed a Texas Whistleblower suit on multiple counts "claiming she was denied a promotion and ultimately lost her job because she blew the whistle on wrong-doing by Hospital officials." (App. A pg. 2). Specifically, "Roberts alleged that, because she warned her superior and members of the Hospital's governing board that the planned purchase of a CT scanner was not being made by competitive bid as required by law"... and "her efforts to professionalize her department" ... "to maintain or create a professional, safe, and fairly administered work environment" ... "her superiors retaliated against her". (App. A pg. 8).

Furthermore, Roberts pleaded in a separate count, violation of the Whistleblower Act. (5th Am. Pet.) Roberts testified after she invoked the grievance procedure – a requirement to seek redress for discrimination and prejudice under the Texas Whistleblower Act – she received an adverse performance evaluation and endured an increased hostile work environment; accordingly, on advice of the Texas Attorney General's office, Roberts reported and made further grievance to the Hospital Administrator, Steve Jacobson. (5th Am. Pet.; S. J. Resp., J.R. Aff. pg. 22; App. A at 11). These facts are undisputed, as evidenced by the Administrator's own personal notes turned over in discovery. (S. J. Resp. J.R. Aff. pg. 22). Petitioner further testified she in good faith believed the Administrator was an appropriate law enforcement authority according to the Hospital grievance policy adopted by the Hospital Board of Managers. (S. J. Resp. pg. 42-44; J.R. Aff. pg. 21). "Roberts represented herself both at trial and on appeal." (App. A pg. 2).

The Hospital moved for summary judgment on the argument Petitioner Roberts did not demonstrate she acted in good faith in making a report, the report involved a violation of law, and in

relevant part, she did not make her violation of law reports to an appropriate law enforcement authority. (Def. Mot. S. J. pg. 3). The Hospital did not file objections or a reply to Petitioner's Summary Judgment Response. (Clerk's Record; App. A at 4).

Petitioner argued the Summary Judgment Motion was legally insufficient. (S. J. Resp. pg. 49-54). In relevant part, Petitioner's Summary Judgment Response argued that subsection §554.002 (b) of the Whistleblower Act, "requires only that an employee have a "good faith" belief that the entity reported to is an appropriate law enforcement authority, not that the report actually be made to such an entity", as stated in *Duvall v. Texas Dept. of Human Services*, 82 S. W. 3d 474 (Tex. App. Austin (2002). (S. J. Resp. pg. 42).

In support of a "good faith" belief the reports were made to an appropriate law enforcement authority, Petitioner responded with testimony of the factual information that was the basis of her reports. (S. J. Resp. pg. 40-42; J.R. Aff. pg. 2-4, 8-18, 20-22). In addition to these undisputed facts, Petitioner submitted testimony she in good faith believed the Hospital, through the named officials with their respective titles were appropriate law enforcement authorities with regard to the violations reported based on their seat of authority over such violations and her knowledge or limited knowledge of the law. (S. J. Resp. pg. 42-44; J.R. Aff. Id.).

In oral argument before the Trial Court, the Hospital recognized Petitioner's "good faith" argument and argued, "she continues to – that she had the belief that these were appropriate authorities because they had the ability to enforce the policies of the hospital.... [i]t doesn't matter if she believed them to be.... [t]here's no way a reasonable person would believe that the hospital could enforce criminal laws or that they could have enforced laws relating to competitive bidding." (R.R. 9-10). Without opinion, the Court granted Summary Judgment. (App. B).

Petitioner appealed to the Sixth Court of Appeals that the Summary Judgment Motion was legally insufficient and the

"violation of law reports" and whether the reports were made to "an appropriate law enforcement authority", were good faith belief issues (App. Br. pg. 16-21, 25-30, 32-39, 53-56). Petitioner also argued the Hospital failed to carry its burden when it did not negate her good faith belief in the competitive bidding requirements, thus in the officials receiving the reports to be appropriate authorities, when it did not produce evidence of the Hospital's prescribed method of purchasing to conclusively prove the Hospital was under no law, as defined by the Act. (App. F 17-18).

Roberts also argued the Act was "facially unconstitutionally vague" and "detrimental to one's livelihood with its false illusion of protection" with regard to the following: the lack of definitive standards by which an employee shall judge, (1) "who" authorizes the authority to investigate or regulate the alleged law violation so an employee may reasonably determine who is qualified to be, "an appropriate law enforcement authority"; and (2) what ordinances or rules under an ordinance are law, verses unprotected internal policy (App. E; App. Reply Br. pg. 8-15). Roberts further argued the term "authority" is ambiguous, and the operative terms defining "law" under the Act are themselves undefined and not construed or applied by the courts with their common everyday meaning, nor are they applied in a manner to be rationally related to the State's interest; accordingly, the Act effectually condemns speech and remedies guaranteed by fundamental law. (App. Reply Br. pg. 8-15).

Before the Court of Appeals the Hospital responded with the fact issue that the purchase of the CAT scan machine was not subject to competitive bidding because no law required it, "the enabling legislation is quiet clear, the *Hospital* prescribes its method in purchasing....", while the "board would be a proper authority to receive employee grievances"... it is not "an appropriate law enforcement authority under the Whistleblower Act because the Hospital Board is not in the business of investigating or enforcing criminal laws and they are not in the